REMARKS/ARGUMENTS

In the Final Office action mailed April 11, 2011, claims 1 – 4, 6 – 12, 14, and 15 were rejected. Additionally, claims 5 and 13 were objected to, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants hereby request reconsideration of the application in view of the amendments and the below-provided remarks. No claims have been amended, canceled, or added.

Allowable Subject Matter

Applicants appreciate the Examiner's review of the claims and determination that claims 5 and 13 recite allowable subject matter. In particular, the Office Action states that claims 5 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The claims have not been rewritten at this time in view of the below provided remarks.

Claim Rejections under 35 U.S.C. 102 and 103

Claims 1 and 9 were rejected under 35 U.S.C. 103(a) as being unpatentable over Tults (U.S. Pat. No. 5,900,913) in view of Kirkland (U.S. Pat. No. 5,900,918) or Harris et al. (U.S. Pub. Pat. No. 2002/0021760 hereinafter Harris). Claims 3, 8 and 11 were rejected under 35 U.S.C. 103(a) as being unpatentable over Tults and Kirkland or Harris, in view of Asai et al. (U.S. Pub. Pat. No. 2002/0000984 hereinafter Asai). Claims 4, 6, 7, 12, 14 and 15 were rejected under 35 U.S.C. 103(a) as being unpatentable over Tults and Kirkland or Harris, in view of Rich (U.S. Pat. No. 5,758,271). However, Applicants respectfully submit that these claims are patentable over Tults, Kirkland, Harris, Asai and Rich for the reasons provided below.

Claim 1

Claim 1 recites:

> "An audio visual display apparatus arranged to receive a broadcast signal comprising a video element and an audio element, wherein the audio element includes an

audio description element providing a description of at least some of the video content, the apparatus including means for switching to output the said audio description element in place of the video element in response to a ***deterioration*** in an operating characteristic associated with the apparatus." (emphasis added)

That is, the output is switched from video to an audio description of the video in response to a deterioration in an operating characteristic (e.g., battery level, memory capacity, signal quality). The terms "deterioration" and "deteriorate" are defined by Dictionary.com as follows:

> **deterioration**
>
> ***–noun***
> **1.** the act or process of deteriorating.
> **2.** the state or condition of having deteriorated.
> **3.** a gradual decline, as in quality, serviceability, or vigor.
>
> **deteriorate**
>
> ***–verb (used with object), verb (used without object),*** -rat·ed, -rat·ing.
> **1.** to make or become worse or inferior in character, quality, value, etc.
> **2.** to disintegrate or wear away.

Applicants assert that "deterioration" is a relative term, which indicates that the character, quality, or value of something (e.g., an operating characteristic of an apparatus such as battery level, memory capacity, signal quality) has become worse. This implies that the something still exists, or else it could not be worse.

Tults teaches that deflection signals, which are generated by a television receiver, are used to decode a Closed Caption (CC) data signal. When the television receiver is turned off so that the television receiver is in standby mode, the deflection signals are no longer generated. Tults goes on to teach a technique for decoding auxiliary data signals that does not use the deflection signals so that auxiliary data such as program guide information can be decoded even though the television receiver is turned off (i.e., in standby mode), see Tults col. 2, lines 5 – 26.

In support of the rejection, the Final Office Action alleges that the lack of availability of the deflection signals when the receiver is turned off reads on "a deterioration in an operating characteristic associated with the apparatus." In particular, the Final Office action states:

> "When an operating characteristic of the video component deteriorates (e.g. deflection is not available: col. 2 lines 5-9), an auxiliary component is played regardless (i.e. closed-captioning) and the video component power supply is switched off (col. 4 line 29+)." (emphasis added) (Final Office action, page 2)

Applicants assert that the loss of the deflection signals in response to the television receiver being turned off does not teach "a deterioration in an operating characteristic associated with the apparatus," as recited in claim 1. That is, the loss of the deflection signals because the television receiver is turned off is not a deterioration of the deflection signals. The deflection signals do not become worse in character, quality, or value, rather, the deflection signals cease to exist. Because the loss of the deflection signals in response to the television receiver being turned off does not teach "a deterioration in an operating characteristic associated with the apparatus," Applicants assert that a *prima facie* case of obviousness has not been established with respect to claim 1.

The above-provided argument was previously made in response to the non-Final Office action. In response to the above provided arguments, the Examiner provides the following response in the outstanding Final Office action:

> "Applicant argues that Tults' auxiliary closed-caption display is the result of his TV being switched into standby mode, which results in deflection signals not being generated rather than resulting from a deteriorated signal.
>
> However, Tults expressly states that 'it may be desirable to operate a closed caption decoder that is controlled using a deflection signal during a mode of operation when *deflection signals are not available'* (col. 2 lines 5-9).
>
> This language suggests that rather than the user simply switching into standby mode as an option (which causes deflection signals to be disabled), the actual video signal with associated closed-captioning is not in its fully receivable state, so the standby mode is prompted. This language in Tults suggests that the TV signal has worsened to the extent that the sync data of the video signal cannot be fully obtained and may not be available to control deflection. Tults first introduces his system by discussing erroneous video signals that may not provide displayable reproduction (col. 1 line 59+).
>
> This now lesser-quality video/data signal can be considered a deteriorated signal (gradualness of deterioration of course being relative, as applicant realizes, such that a TV signal can deteriorate more drastically and within seconds whereas an ice shelf deteriorates over decades if not centuries, for example)." (Final Office action, page 3)

Applicants assert that the above-provided statement does not support a *prima facie* case of obviousness for at least the following reasons.

The Final Office action alleges that the teaching in Tults, "it may be desirable to operate a closed caption decoder that is controlled using a deflection signal during a mode of operation when deflection signals are not available", "suggests" that the standby mode is prompted when

"the actual video signal with associated closed-captioning is not in its fully receivable state." However, the conclusory statement, "[t]his language suggests that rather than the user simply switching into standby mode as an option (which causes deflection signals to be disabled), the actual video signal with associated closed-captioning is not in its fully receivable state, so the standby mode is prompted," is not supported by Tults or any other factual basis. Tults teaches that the standby mode is triggered by a user action. With respect to triggering the standby mode, Tults teaches:

> "Microcontroller 10 produces signal STANDBY in response to power on/off commands from a user. For example, a user activates a power on/off button on remote 12 to turn off the system." (emphasis added) (col. 4, lines 44 – 48)

Here, Tults clearly teaches that the standby mode is triggered by a user pressing an on/off button of a remote control. Tults does not teach any other technique for putting the system into standby mode and the Examiner has not provided any reference to Tults in which Tults teaches another technique for putting the system into standby mode.

The Final Office action tries to further support the conclusory statement with the following:

> "This language in Tults suggests that the TV signal has worsened to the extent that the sync data of the video signal cannot be fully obtained and may not be available to control deflection. Tults first introduces his system by discussing erroneous video signals that may not provide displayable reproduction (col. 1 line 59+)."

Applicants assert that this statement does not support a conclusion that a deterioration in the deflection signals prompts the system to switch to standby mode. At col. 1, line 57 – col. 2, line 2, Tults teaches in full:

> "Controlling an auxiliary data decoder with a deflection signal may increase the reliability of the decoded data. Decoder features, such as horizontal line and delay counters controlled by pulses in a sync signal, may count incorrectly in response to noise pulses in the sync signal causing the decoder to operate improperly. A sync signal that is derived from the television signal may include noise pulses corresponding to noise in the television signal. In comparison, deflection signals are generated using phase-locked loop (PLL) circuits that produce stable, uniform amplitude pulse waveforms that are less likely to include noise effects. Thus, it may be desirable to control an auxiliary data decoder using deflection signals." (emphasis added)

Here, Tults teaches that a sync signal, which is derived from the television signal, may include noise pulses. Tults goes on to teach that the deflection signals, which are different from the sync signal, are less likely to include noise and that it may be more desirable to use the deflection signals to decode auxiliary data instead of the sync signal. Tults does not teach anything about a deterioration of the deflection signals, nor does Tults teach that a deterioration of the sync signal or that a deterioration of the deflection signals prompts the system to switch to standby mode. Tults simply describes that a sync signal, which is derived from a television signal, may have more noise than the deflection signals and that it may be more desirable to use the deflection signals to decode auxiliary data instead of the sync signal. This teaching in Tults does not support the Examiner's position that the standby mode is somehow prompted by a video signal not being in a fully receivable state.

Further, Applicants respectfully request clarification of the statements: "This language in Tults suggests that the TV signal has worsened to the extent that the sync data of the video signal cannot be fully obtained and may not be available to control deflection. Tults first introduces his system by discussing erroneous video signals that may not provide displayable reproduction (col. 1 line 59+)." For example, it is unclear what is meant by "the synch data…may not be available to control deflection" and "erroneous video signals that may not provide displayable reproduction."

With reference to the statement "This now lesser-quality video/data signal can be considered a deteriorated signal (gradualness of deterioration of course being relative, as applicant realizes, such that a TV signal can deteriorate more drastically and within seconds whereas an ice shelf deteriorates over decades if not centuries, for example)", Applicants assert that this statement does not support a *prima facie* case of obviousness. As stated above, Tults teaches that a sync signal, which is derived from a television signal, may have more noise than the deflection signals. This observation is made by Tults to show why it may be desirable to decode auxiliary data using deflection signals instead of using the sync signal. Even if the sync signal itself can be seen as a deteriorated signal, Tults still does not teach that any aspect of the sync signal is used to trigger the standby mode. Rather, the standby mode is triggered by a user action as described above. Because Tults does not teach that any aspect of the sync signal is used to trigger the standby mode, Applicants assert that the Examiner's remarks do not support a *prima facie* case of obviousness.

Additionally, even if the loss of the deflection signals were to be read as a deterioration in the deflection signals, the loss of the deflection signals does not trigger a switch from outputting video to outputting an audio description of the video in place of the video as recited in claim 1. Tults teaches that a switch from the normal operating mode (i.e., the receiver is "on") to the standby mode (i.e., the receiver is "off") triggers the auxiliary data to be decoded using a separated sync signal instead of deflection signals, see Tults Abstract. That is, Tults teaches decoding the auxiliary data using one of two sync signals depending on the mode. According to Tults, the auxiliary data is still decoded and output whether the system is in the normal operation mode or in the standby mode. Tults does not teach that the auxiliary data is decoded in place of the video data. Therefore, Applicants assert that the switch to decoding the auxiliary data using a separated synch signal (standby mode) instead of the deflection signals (normal operation mode) does not involve a switch from outputting video to outputting an audio description of the video in place of the video element as recited in claim 1.

For at least the above-provided reasons, Applicants assert that a prima facie case of obviousness has not been established.

Independent Claim 9

Applicants respectfully assert that independent claim 9 is patentable over the proposed combinations of cited references at least for similar reasons to those stated above in regard to the rejection of independent claim 1.

Dependent Claims

Claims 2 – 8 are dependent on claim 1 and claims 10 – 15 are dependent on claim 9. Applicants respectfully assert that these claims are allowable at least based on an allowable base claim.

CONCLUSION

Generally, in this Amendment and Response, Applicants have not raised all possible grounds for (a) traversing the rejections of the Action or (b) patentably distinguishing any new claims (i.e., over the Cited References or otherwise). Applicants however, reserve the right to explicate and expand on any ground already raised and/or to raise other grounds for traversing

and/or for distinguishing, including, without limitation, by explaining and/or distinguishing the subject matter of the Application and/or any cited reference at a later time (e.g., in the event that this Application does not proceed to issue with the claims as herein amended, or in the context of a continuing application). Applicants submit that nothing herein is, or should be deemed to be, a disclaimer of any rights, acquiescence in any rejection, or a waiver of any arguments that might have been raised but were not raised herein, or otherwise in the prosecution of this Application, whether as to the original claims or as to any of the new claims, or otherwise. Without limiting the generality of the foregoing, Applicants reserve the right to reintroduce one or more of the original claims in original form or otherwise so as to claim the subject matter of those claims, both/either at a later time in prosecuting this Application or in the context of a continuing application.

Applicants respectfully request reconsideration of the claims in view of the amendments and the remarks made herein. A notice of allowance is earnestly solicited.

At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account **50-4019** pursuant to 37 C.F.R. 1.25. Additionally, please charge any fees to Deposit Account **50-4019** under 37 C.F.R. 1.16, 1.17, 1.19, 1.20 and 1.21.

Respectfully submitted,

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